

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CHRISTOPHER L.,

Plaintiff,

V.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

CASE NO. C19-5253 BAT

ORDER AFFIRMING THE COMMISSIONER AND DISMISSING THE CASE

Plaintiff contends the ALJ improperly pressured him to amend his onset date and

abandon his Title II disability claim in violation of his right to due process. Dkt. 13. The record does not support the contention and the Court accordingly **AFFIRMS** the Commissioner's final decision and **DISMISSES** the case with prejudice.

In 2012 and 2014, plaintiff filed applications for disability benefits, alleging disability since May 2009. Tr. 28. Plaintiff's last date insured for Title II benefits is June 30, 2014. Tr. 30. In 2015 ALJ Robert Kingsley found plaintiff not disabled, Tr. 25-46, and the Appeals Council denied review. Tr. 1-7. Plaintiff appealed and in 2017 this Court remanded the case for further proceedings. Tr. 1643-61. On June 18, 2018, plaintiff and counsel appeared for a hearing before ALJ Marilyn Mauer. ALJ Mauer informed plaintiff that "in order to receive Title II disability

1 benefits, you would have to establish, through medical evidence, that you became disabled on or
2 before that date [June 30, 2014].” Tr. 1560. ALJ Mauer also stated to plaintiff and counsel:

3 By way of limiting the issues, I do find the claimant is currently
4 disabled. However, the earliest onset date for which I find medical
5 evidence of that disability to March 1, 2016, based on the records
6 of Dr. Wheeler. If you wish to pursue – that’s the first time I can
7 establish there is a physical impairment that would have interfered
at a disabling level of work. If you wish to pursue an earlier date, it
would likely have to be on the basis of psychological issues, for
which I would require a medical expert. Bearing all this mind,
would you like an opportunity to talk to your client?

8 Tr. 1561. In response, plaintiff’s counsel told the ALJ “Oh, we do want to amend the onset date,
9 by the way to August 19th of 2012.” Tr. 1562. The ALJ then stated “Okay. If you’d like an
10 opportunity to talk to your client, please go ahead and go on out.” *Id.* Counsel subsequently
11 moved for a cardiologist and ALJ Mauer stated “I can ask for one but they’re not just going to
12 give me Dr. Yao, you know.” Tr. 1563.

13 The record shows the following ensued:

14 ATTY: “I don’t know how good – he would like to accept the partial –”

15 ALJ: “All right. So you’re withdrawing your application for Title II benefits
sir?”

16 CLMNT: “Yes.”

17 ALJ: “And you understand that means that you’re giving up all Title II Benefits,
and you’re giving up your claim to any Social Security Benefits before
March 1, 2016?”

18 CLMNT: “Yes.”

19 ATTY: “Can you give me an extra three months?”

20 ALJ: “This is not *Let’s Make a Deal*, Ms. Kinney.

21 ATTY: “Well it feels like it a little.”

22 ALJ: “No it’s not.”

1 ATTY: "All right."

2 ALJ: "This is what I saw the medical -- and you have an opportunity to have a
3 full hearing if you disagree with my assessment of the medical records. In
4 fact. I'm actually giving him an extra month because of the date of the
 thing I am relying on is actually March 29, 2016 and I'm making sure it's
 a full month so that it can count as a benefit month."

5 ATTY: "Right."

6 ALJ: "—he'll get that full month. Okay? So, March 1, 2016. Are we all
7 agreed?"

8 CLMNT: "Yes."

9 ALJ: "All right. Thank you. I don't need any vocational testimony then, and I
10 will prepare the appropriate instructions. Thank you all for your time
 today and this proceeding is adjourned." Tr. 1563-64.

11 On June 21, 2018, petitioner's lawyer sent ALJ Mauer a letter withdrawing plaintiff's
12 agreement to amend the onset date to March 1, 2016 and indicating he was willing to amend the
13 onset date to August 18, 2012. See Dkt. 13, Exhibit. ALJ Mauer found plaintiff had rescinded his
14 agreement to amend of his onset date and held another hearing on October 26, 2018. Tr. 1565. At
15 the October hearing, the ALJ called Dr. James Todd a cardiologist to provide medical testimony.
16 After Dr. Todd testified the records shows the following exchange occurred:

17 ATTY: "You still have the same thing on the table from before?"

18 ALJ: "Uh-huh."

19 ATTY: "Okay."

20 ALJ: "Do you want to talk to your client again?"

21 ATTY: "Yeah."

22 ALJ: "I will tell you I have those instructions written because they were written
 before you sent it."

23 ATTY: "I know."

1 ALJ: "And that decision will go directly to the writers today. If I get another
2 letter rescinding, I'm going to ask to have it assigned to a different
Administrative Law Judge. Off the record."

3 ATTY: "March 1st?"

4 ALJ: "2016."

5 ALJ: "All right. We're back on the record. Ms. Kinney?"

6 ATTY: "Yes your Honor. Mr. [L] would ask that you amend his onset date to
March 1st of 2016."

7 ALJ: Mr. [L]. I'm going to ask you the same questions I asked you at the
8 previous hearing. Do you understand that by giving, by amending your
onset date, you're giving up your claim to any benefits under Title II of
9 the Act, and will only be receiving benefits under Title XVI, Supplemental
Security Income?"

10 CLMNT: "Okay."

11 ALJ: "And do you understand that you will not receive any benefits before.
12 That are calculated before March 1, 2016?"

13 CLMNT: "Yes."

14 ALJ: "And do you understand that having already made this agreement with
you on one occasion, and if it gets rescinded again, I will not conduct
another hearing, and will pass this case onto another Administrative Law
Judge, and we'll start from ground zero?"

16 CLMNT: "Okay."

17 ALJ: "Okay. All right. With that understanding, this proceeding is adjourned."

18 Tr. 1580-81.

19 On December 7, 2018, ALJ Mauer issued a favorable decision on plaintiff's SSI claim
20 finding he was disabled since March 1, 2016 and dismissing plaintiff's Title II claim based upon
21 the amended onset date of March 1, 2016. Tr. 1544-56.

22 Plaintiff contends the ALJ violated his due process rights by pressuring him into
23 amending his onset date by "appear[ing] to have offered to award benefits as of March 1, 2016

1 but only if [L.] agreed to amend his onset date to that date.” Dkt. 13 at 5. Plaintiff further argues
2 at the October hearing he “accepted the ALJ’s offer, as he had little choice the ALJ was
3 apparently unwilling to evaluate any of the evidence of disability prior to March 1, 2016, nor was
4 she willing to issue a partially favorable decision.” *Id.* at 6. The record belies plaintiff’s
5 arguments.

6 At the June 2018 hearing the ALJ did not pressure plaintiff into amending his onset date.
7 Rather the ALJ stated the medical evidence showed plaintiff became disabled on March 1, 2016
8 and that if plaintiff wished to pursue an earlier date additional medical expert evidence was
9 needed. In advising plaintiff of her view of the evidence, the ALJ did not indicate he should
10 amend his onset date. The first person to mention amendment is plaintiff’s lawyer. There is thus
11 nothing in the record showing the ALJ improperly pressured plaintiff into amending his onset
12 date.

13 The record regarding the October hearing does not support plaintiff’s contention the ALJ
14 was unwilling to evaluate disability prior to March 2016. To the contrary, the ALJ called Dr.
15 Todd to set forth his opinions regarding plaintiff’s medical conditions and the impact of those
16 conditions on plaintiff’s ability to perform work activity, based upon a review of the medical
17 record. Tr. 1567. The ALJ then admitted all evidence in sections A, B, D, E and F that was not
18 previously admitted. *Id.* The ALJ also asked Dr. Todd “at any point from 2009 to the present, has
19 the, has this gentleman had a condition that met or equaled a listed impairment?” Tr. 1573.
20 Plaintiff’s counsel also questioned Dr. Todd about neurologic limitations plaintiff had in 2014
21 that would affect his ability to perform detailed versus simple work. Tr. 1578. Dr. Todd indicated
22 the record showed normal neurologic findings and there were no comments contained in the
23 record regarding cognitive or executive functioning ability. Tr. 1579. The record shows the ALJ

1 was not only willing to evaluate plaintiff's disability prior to March 2016 but in fact was
2 evaluating disability during this time period by calling a medical expert to provide testimony
3 about that time period.

4 After Dr. Todd provided testimony that was not supportive of plaintiff's Title II claim,
5 plaintiff's counsel asked the ALJ if the same offer was on the table. Again, the ALJ did not
6 initiate a discussion on amending the onset date. Rather it was plaintiff's counsel who pursued
7 the amendment. Counsel's tactical decision to secure Title XVI benefits given the testimony
8 presented both at the hearing and contained in the evidence of record was thus one that plaintiff
9 and his counsel made. Because the record is clear the ALJ did not initiate a discussion about
10 amending the onset date, did not initiate a discussion about whether the initial offer was still on
11 the table, and did not tell or urge plaintiff he should amend the onset date, the Court finds
12 plaintiff has failed to establish the ALJ violated his due process rights. This is not a case in
13 which the ALJ's behavior, in the context of the whole case, was so extreme that the matter was
14 not fairly adjudicated and due process offended. *See c.f. Bayless v. Barhnart*, 427 F.3d 1211,
15 1214-15 (9th Cir. 2005) (Claim ALJ was not impartial fails where plaintiff has not specifically
16 shown ALJ was unable to render fair judgment.).

17 In sum, the Court concludes plaintiff has failed to establish he was improperly pressured
18 to amend his onset date in violation of the due process clause. Because the record shows plaintiff
19 amended his onset date after consulting with his lawyer, and after being advised that the
20 amendment would preclude Title II benefits, the Court need not address plaintiff's other
21 claims: the ALJ erred in failing to evaluate evidence from August 2012 to February 2016, and
22 failed to properly evaluate plaintiff's residual functional capacity and make step four and five
23 findings for the time period between August 2012 and February 2016. The Court need not

1 address these claims because as the ALJ informed plaintiff, by amending his onset date, plaintiff
2 was giving up claim to any benefits under Title II of the Act. The ALJ accordingly properly did
3 not address the evidence of disability for the time period between 2012 through February 2016,
4 and properly made no RFC, or step four or five findings as to this time period. The Court
5 therefore **AFFIRMS** the Commissioner's final decision and **DISMISSES** the case with
6 prejudice.

7 DATED this 7th day of January, 2020.

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10 BRIAN A. TSUCHIDA
11 Chief United States Magistrate Judge
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